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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

**BARK, CASCADIA WILDLANDS,
OREGON WILD, and
WILDEARTH GUARDIANS**

Case No.: 3:18-cv-01645-MO

Plaintiffs,

v.

U.S. FOREST SERVICE, a federal agency,

Federal Defendant,

and

HIGH CASCADE INC.

Intervenor Defendant.

**FEDERAL DEFENDANT'S
UNOPPOSED MOTION FOR
RELIEF FROM ORDER OF
REMAND AND
SUPPORTING
MEMORANDUM**

MOTION FOR RELIEF FROM ORDER OF REMAND

For the reasons stated in the following memorandum, Federal Defendant hereby moves under Rule 60(b) of the Federal Rules of Civil Procedure for relief from the Order of Remand dated September 25, 2020, ECF No. 81. Neither Plaintiffs nor Intervenor Defendant oppose this motion.

MEMORANDUM IN SUPPORT OF MOTION

In June 2018, the Forest Service approved the Crystal Clear Restoration Project (Project) on the Mt. Hood National Forest in a Decision Notice and Finding of No Significant Impact that was supported by an environmental assessment under the National Environmental Policy Act (NEPA). AR_21069-125. The United States Court of Appeals for the Ninth Circuit issued an Order and Opinion dated May 4, 2020, finding that “an [Environmental Impact Statement] is required” under NEPA and “remand[ing] to the district court with instructions to remand to the [Forest Service] for further proceedings consistent with this opinion.” ECF No. 74 at 14. On September 25, 2020, the Court issued an Order of Remand “to the United States Forest Service for further proceedings consistent with” the Order and Opinion from the Court of Appeals. ECF No. 81.

As noted in the attached Forest Service memorandum, between the date of the Ninth Circuit’s Order and Opinion and this Court’s Order of Remand, a wildfire started that “eventually spread into the eastern portion of the project area within the Juniper Flats Wildland Urban Interface,” eventually burning approximately 1,400 acres of the Project area. Ex. 1. In light of the changed circumstances from the wildfire as well as the outcome of this litigation, the Forest Service formally withdrew the Project on October 26, 2020. *Id.* “As new projects or

activities are proposed in the [P]roject's area, the Forest Service will complete appropriate environmental analyses and issue new decisions." *Id.*

Relief from the Order of Remand under Rule 60(b) of the Federal Rules of Civil Procedure is warranted in light of the Forest Service's withdrawal of the Project. Rule 60(b) provides that "the court may relieve a party or its legal representative from a final judgment, order, or proceeding for . . . (6) any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). As the Project has been withdrawn, relief under Rule 60(b)(6) is warranted because requiring the Forest Service to undertake further proceedings in support of a withdrawn decision "would be a needless waste of time and resources." *Native Ecosystems Council v. Weldon*, No. 11-cv-99-M-DWM, 2012 WL 5986475, at *2 (D. Mont. Nov. 20, 2012) (granting relief under Rule 60(b)(6) from order requiring supplemental NEPA analysis after project withdrawn due to wildfire). As such, Federal Defendant requests that the Court relieve the Forest Service from the Order of Remand.

Respectfully submitted this 24th day of November 2020,

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CERTIFICATE OF COMPLIANCE

This brief complies with the applicable word-count limitation under LR 7-2(b) because it contains 458 words, including headings, footnotes, and quotations, but excluding the caption, signature block, and certificates of counsel.

/s/ *Shaun M. Pettigrew*

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